UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF ADMINISTRATIVE LAW JUDGES

C2G LTD. CO.

Cases 19-CA-163444
and 19-CA-169910

GENERAL TEAMSTERS LOCAL 959, STATE OF ALASKA, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

This matter was heard on April 24, 2018, before Administrative Law Judge Eleanor Laws in Fairbanks, Alaska, on an Amended Consolidated Complaint ("Complaint") alleging that C2G Ltd. Co. ("Respondent") engaged in numerous unfair labor practices within the meaning of §§ 8(a)(1), (3), and (5) of the Act.

I. OVERVIEW[1]

Respondent is a State of South Carolina limited liability company with an office and place of business at Eielson Air Force Base in Fairbanks, Alaska (the "Base"), where it is engaged in the business of providing air terminal ground handling services. Effective October 1, 2012, Respondent took over the government contract, Contract HTC711-12-C-R001, for this work at the Base (the "government contract"). (Tr. 61:22-63:25.)

Since about that date, Respondent has recognized General Teamsters Local 959 (the "Union") as the exclusive collective-bargaining representative of the bargaining unit, which consists of all of Respondent's full-time and part-time employees, including leads, employed by Respondent under the government contract at issue (the "Unit").[2] (Tr.

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[1] References to the Transcript of the proceedings before the Administrative Law Judge (ALJ) are noted as: (Tr. ___:___), which shows the Transcript page and line, respectively. References to Joint exhibits will be made as: (JX.__), and references to General Counsel's exhibits will be made as: (GCX.___), with cites to the appropriate arbitration transcript page and/or arbitration exhibit, where applicable.
For example, a reference to the arbitration transcript in the record as JX 2 will read: (JX 2, __:__, which shows the Transcript page and line, respectively.

For references to arbitration exhibits, "arb JX" will be used for Joint arbitration exhibits; "arb UX" will be used for Union arbitration exhibits; and "arb CX" will be used for Company arbitration exhibits. Thus, a reference to a Union arbitration exhibit in JX 3 will read: (JX 3, arb UX __), with additional page cites where applicable.

[2] According to the Union, the proper Unit description should have read "all of Respondent's full-time and part-time seasonal employees…," as the parties bargained *only* for full-time and part-time seasonal classifications and not for part-time employment. (JX 2, 302:2-304:1; JX 5, 109:2-11, 110:6-20.) The recognition language set forth in § 1.01 of the CBA was accidentally carried over from the recognition clauses in the CBAs with Respondent's predecessor. (JX 3, arb UX 25; JX 5, 46:20-48:14, 171:8-16; JX 6, arb UX I, arb UX J.) No other section of the CBA refers to "part-time" employees; all other sections refer only to "part-time seasonal" employees. (See JX 3, arb JX 1, §§ 2.01, 2.03, 7.01-7.02, 9.01, 13.01, 18.01-18.02; JX 6, arb JX 1, §§ 2.01, 2.03, 7.01-7.02, 9.01, 13.01, 18.01-18.02.)

63:25-64:13; JX 3, arb JX 1; JX 6, arb JX 1.) Concurrently, Respondent hired on many of its predecessor's employees, including full-time Unit employees Richard Tuiletufuga ("Tuiletufuga") and Phillipp Finney ("Finney"). (JX 2, 201:18-202:14, 245:19-246:9, 252:10-18; JX 3, arb UX 2, arb UX 8, arb UX 14, arb UX 25, arb UX 33, arb UX 35; JX 6, arb UX D, arb UX E, arb UX H, arb UX BB; JX 9, pp. 1-2.)

Respondent presented the Unit employees it intended to hire in 2012 upon taking over the government contract with identical job offer letters which included a section entitled "Part Time/Full Time Status," which provided,

> 3. Part Time/Full Time Status: All positions will be part time but do not preclude any or all employees from working 32-40 hours per week, or in excess of 40 hours per week depending upon contract workload.

(JX 3, arb UX 2, arb UX 8, arb UX 14, arb UX 25, arb UX 33, arb UX 35; JX 5, 223:10-13; JX 6, arb UX D, arb UX E, arb UX H, arb UX BB; JX 9, pp. 1-2.)

Shortly after Respondent took over the government contract and hired the Unit employees, Respondent and the Union negotiated for and reached a collective bargaining agreement setting forth the terms and conditions of employment of the Unit, which was effective from October 1, 2012, through September 30, 2016 (the "CBA"). (Tr. 63:25-64:13; JX 3, arb JX 1; JX 6, arb JX 1.) The newly negotiated CBA included a just cause clause at § 10.01, which provides,

> **Section 10.01 Discipline.** The Company shall not discharge nor suspend any employee without just cause…

(JX 3, arb JX 1, § 10.01; JX 6, arb JX 1, § 10.01.) The CBA also requires, at § 10.03, that "[t]he progressive discipline policy, and any subsequent changes to it, will be negotiated with the Union…" (JX 3, arb JX 1, § 10.03; JX 6, arb JX 1, § 10.03.)

With respect to vacation benefits, Article 18 of the negotiated CBA provided different vacation leave accrual rates for "part-time seasonal employees" and "employees." § 18.02 defined "employees" as including all "bargaining unit employees on the active payroll of the Company." (JX 3, arb JX 1, §§ 18.01, 18.02.)

Sections 18.01 and 18.02 of the CBA read as follows:

> **Section 18.01 Vacation.** Employees will earn vacation based on a bimonthly payroll period with twenty-four (24) pay periods per year…
> Part time seasonal employees vacation will be paid out annually on their anniversary date and will accrue pro-rata based on the following:
> a. On date of hire, .038461 per hour.
> b. Beginning with an employee's fifth (5th) year of employment, 0.057692.
> c. Beginning with an employee's tenth (10th) year of employment 0.076923.
> d. Beginning with an employee's fifteenth (15th) year of employment, 0.0961538.
>
> **Section 18.02 Vacation Amounts for Employees.** Vacation benefits for bargaining unit employees on the active payroll of the Company are as follows:
> a. Eighty hours (80) after one (1) year of employment, accrued at 3.33 hours per pay period.
> b. One hundred twenty hours (120) beginning with an employee's fifth (5th) year of employment, accrued at 5.00 hours per pay period.
> c. One hundred sixty (160) hours beginning with an employee's tenth (10th) year of employment, accrued at 6.67 hours per pay period.
> d. Two hundred (200) hours beginning with an employee's fifteenth (15th) year of employment, accrued at 8.33 hours per pay period.

(JX 3, arb JX 1; JX 6, arb JX 1.)

Under the CBA, "employees" subject to § 18.02 were those guaranteed 32 or more hours of work per week under § 9.01, while "part-time seasonal" employees were excluded from this guarantee of hours and were subject to a different rate of vacation

accrual under § 18.01. (JX 2, 250:4-15, 251:1-21, 304:2-8; JX 3, arb JX 1, §9.01(a); JX 5, arb JX 1, §9.01(a).) Section 9.01(a) provided that Respondent could only hire "part-time seasonal" employees during the peak military exercise season, spanning from around March to October. (JX 2, 251:18-252:4, 324:17-325:1; JX 3, arb JX 1, § 9.01(a); JX 5, 45:2-16, 209:2-211:7; JX 6, arb JX 1, § 9.01(a).)

As of 2015, there were 12 Unit employees in the Unit covered by the CBA, including Finney, Tuiletufuga, Michael Smith ("Smith"), Glenda Evans ("Evans"), Allen Matthews ("Matthews"), and Chris Jones ("Jones") (the "affected Unit employees"). (Tr. 53:12-15.) Despite the fact that Respondent continued using the offer letters with the "Part Time/Full Time Status" language quoted above for all of its new hires, during the almost three years between Respondent's October 2012 takeover of the government contract and about July 2015, all of the affected Unit employees worked full-time hours and were treated as full-time employees for all contractual intents and purposes. (Tr. 101:8-102:25; JX 2, 75:11-15, 78:18-79:11, 144:8-146:20, 233:16-25; JX 3, arb UX 6, arb UX 10, arb UX 29, arb UX 32; JX 5, 193:11-18, 195:6-10, 294:19-296:5, 346:11-347:13; JX 6, arb UX AA, arb UX CC.)

Being treated as full-time employees meant, in part, that all of Respondent's affected Unit employees accrued vacation leave at the § 18.02 rate applicable to "bargaining unit employees on the active payroll of the Company," rather than the § 18.01 rate reserved only for part-time seasonal employees. In fact, during that three-year period, Respondent also granted all of these Unit employees vacation leave at the § 18.02 rate during their first years of employment. (Tr. 101:8-102:25; JX 3, arb UX 6,

arb UX 10, arb UX 29, arb UX 32; JX 6, arb UX S, arb UX U, arb UX Z, arb UX AA, arb UX CC.)

This practice continued until about mid-July 2015, when Respondent discovered its first "mistake": it decided that, under its interpretation of the language in § 18.02, it should not have been awarding Unit employees § 18.02 vacation leave accrual during their first years of employment. Upon discovery of this alleged mistake, in mid-July 2015, Respondent abruptly took away all vacation leave its Unit employees had earned at the § 18.02 rate during their first years of employment with Respondent without first informing either the affected Unit employees or the Union and without offering to bargain with the Union about its intention to change this long-running practice. (JX 3, arb UX 6, arb UX 10, arb UX 29, arb UX 32; JX 6, arb UX S, arb UX U, arb UX Z, arb UX AA, arb UX CC.) This was Respondent's first unilateral change to its vacation leave practices, which the General Counsel alleges violate §§ 8(a)(1) and (5) of the Act.

The next change came just two months later, on September 21, 2015, immediately before a Step 3 meeting regarding a class action grievance the Union had filed in response to the first change described above. By email before the meeting, Respondent's President, Thomas Copeland ("Copeland"), announced that Respondent still hadn't gotten things right by its first unilateral change; he asserted for the first time that all Unit employees hired after the first wave in October 2012 were actually "part-time" employees, subject to the vacation accrual rate negotiated for "part-time seasonal" employees in § 18.01 of the CBA. (JX 3, arb JX 2, p. 7, arb UX 13, pp. 37-38; JX 6, arb UX B.) As such, Respondent re-credited its newer hires with the amount of vacation they would have accrued at the § 18.01 rate since their first dates of employment with

Respondent, and began to award them vacation leave only at the § 18.01 rate going forward. (JX 1, p. 3; JX 3, arb UX 6, arb UX 10, arb UX 29, arb UX 32; JX 6, arb UX S, arb UX U, arb UX Z, arb UX AA, arb UX CC.)

Respondent adopted its new position just before the Step 3 meeting despite the fact that these employees had been: indisputably "bargaining unit employees on the active payroll of the Company"; hired as full-time employees; working full-time hours throughout their employment; and receiving offer letters with the same language as those received by the employees hired in October 2012 – none of which mentioned the term "part-time seasonal." (*Compare* JX 3, arb UX 2, arb UX 8, arb UX 14, arb UX 25, arb UX 33, arb UX 35; JX 5, 223:10-13; JX 6, arb UX D, arb UX E, arb UX H, arb UX BB; and JX 9, pp. 1-2, *with* JX 3, arb UX 5, arb UX 26, arb UX 31; JX 6, arb UX C, pp. 1-15, arb UX E, pp. 18-19, arb UX V; and JX 9, pp. 3-6.) Thus, Copeland's September 21, 2015, announcement and the resulting changes to the affected Unit employees' full-time status and vacation accrual constituted the second set of alleged unilateral changes in violation of §§ 8(a)(1) and (5) of the Act. Since these changes were made in response to the class action grievance, they are also alleged to have been retaliatory in violation of §§ 8(a)(1) and (3) of the Act.

Meanwhile, throughout 2014 and 2015, the offer letters Respondent had issued to these same "new hires" – and to longtime employees accepting internal transfers – contradicted the terms of the CBA and the existence of Respondent's collective bargaining relationship with the Union. (JX 3, arb UX 5, arb UX 26, arb UX 31; JX 6, arb UX C, pp. 1-15, arb UX E, pp. 18-19, arb UX V; JX 9, pp. 3-6.) The General Counsel alleges that these offer letters violated §§ 8(a)(1) and (5) of the Act.

II. THE UNDERLYING FACTS FULLY DEVELOPED AT THE ARBITRATIONS

In addition to the class action grievance referenced above concerning Respondent's first unilateral change, the Union also filed a second grievance over the terms in the job offer letters. During the investigation into the instant unfair labor practice charges into Cases 19-CA-163444 and 19-CA-169910, Respondent did not agree to defer the charges to the parties' grievance-arbitration procedure, despite that the same facts would be heard in either forum. As such, the Complaint was held in abeyance while the two grievances proceeded to arbitration. (GCX 1(l); JX 5, 21:8-12, 88:11-13, 178:24-179:2.)

The two arbitration hearings were held before Arbitrator Richard Ahearn ("Arbitrator Ahearn") on September 1 and 2, 2016, and before Arbitrator Marshall Snider ("Arbitrator Snider") on November 9 and 10, 2016, respectively. (JX 1, pp. 2-3.) Both arbitrators fully developed the factual records, including on all events underlying the allegations in the Complaint, and both issued decisions.[3] (JX 2; JX 3; JX 4; JX 5; JX 6; JX 7.) Although the underlying facts were heard by the two arbitrators, neither arbitrator chose to address the unfair labor practice issues in the Complaint.[4] As such, this matter was re-set for hearing on April 24, 2018. (GCX 1(n).)

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[3] At the two arbitration hearings, all witnesses were sworn and testified under oath. (JX 2, 38:2-8, 45:5-11, 89:5-11, 148:6-12, 204:8-15, 319:5-11, 348:13-20; JX 5, 38:10-17, 180:11-21, 200:20-201:2, 237:1-10, 277:24-278:6, 313:14-22, 353:19-25.)

[4] Arbitrator Ahearn, for example, analyzed that "the CBA contains no provision imposing obligations under the National Labor Relations Act (NLRA)" and that "Under such circumstances, I am persuaded that well-established principles of contract interpretation preclude my consideration of the Employer's obligations to bargain in good faith or to avoid making unilateral changes under Sections 8(a) (1) and (5) of the NLRA." (JX 4, p. 4.) He acknowledged the existence of the instant Complaint in concluding, "I am persuaded that I lack the authority to consider the unilateral changes issues as posed by the Union as their resolution requires application of the 'positive law' of the NLRA that is being addressed through the NLRB's administrative hearing process." (*Id.*)

A. From October 2012 Until July 2015, Respondent's Affected Unit Employees Were Hired As Full-Time Employees and Accrued Vacation Leave at the § 18.02 Rate, Including During Their First Years of Employment

At the two arbitration hearings, two of the Unit employees who were hired in about September 2012 immediately upon Respondent receiving the government contract for this work – Finney and Tuiletufuga – testified extensively about the terms of their hire by Respondent. (JX 2; JX 5.) Similarly, Unit employees Evans and Matthews – who were each hired in 2014, after the initial batch of employees Respondent hired from its predecessor upon its takeover of the government contract – testified thoroughly about their employment status at the arbitration hearings. (JX 2; JX 5.)

As discussed in detail below, each of these employees testified that from their hire dates until late summer 2015, they were treated as full-time employees of Respondent. Specifically, Finney and Tuiletufuga testified that they were hired into the same, full-time positions they had held with Respondent's predecessor(s), and were assured upon their hire by Respondent's management that despite the confusing "Part Time/Full Time Status" language in their initial offer letters, their terms and conditions of employment (including their vacation leave accrual rate) would be identical to those they had enjoyed previously. All testified that, throughout their employment by Respondent, they worked full-time hours as defined under the CBA (*i.e.,* 32 or more) during the calendar year, and received all contractual benefits for regular (not "part-time seasonal") employees.[5] None of these employees were ever told they were being hired as part-time employees, let alone "part-time seasonal" employees. (JX 2, 75:11-15, 78:18-

[5] In fact, Unit employees receiving the identical offer letters were even compensated for the difference if they ever in fact worked less than 32 hours, since as full-time employees, they were guaranteed a minimum of 32 hours under § 9.01 of the CBA. (JX 5, 169:4-19; 254:2-22.)

79:11, 95:15-97:3, 98:14-99:4, 135:6-22, 144:8-146:20, 208:9-13, 208:20-25, 211:12-23, 229:8-24, 233:5-25, 236:6-9; JX 5, 185:18-186:17, 187:20-188:6, 198:10-11, 193:11-18, 195:6-10, 246:8-247:12, 283:15-21, 284:5-25; 294:19-296:5, 300:18-301:24, 306:9-17, 309:8-16, 346:11-347:13.)

Their understanding regarding their full-time classification/status was corroborated by the fact that all of these Unit employees had accrued vacation leave at the rate set forth in § 18.02 of the CBA throughout their employment. For a period of nearly three years, not a single one of Respondent's Unit employees accrued vacation leave under the rate set forth in § 18.01 of the CBA for "part-time seasonal" employees. Even when Respondent hired "new" Unit employees in the years after 2012 (like Smith, Evans, and Matthews), each of these new hires began to immediately accrue vacation leave at the § 18.02 rate, starting on their first days of employment with Respondent.[6] (JX 3, arb UX 6, arb UX 10, arb UX 29, arb UX 32; JX 6, arb UX S, arb UX U, arb UX Z, arb UX CC.)

B. In About July 2015, Respondent Discovered an Alleged Payroll "Mistake" and, without First Notifying or Bargaining with the Union, Made Changes to its Established Practice by Taking Away Unit Employees' Accrued Vacation Leave and Changing their Accrual Rate

In late summer 2015, Unit employee Smith resigned and did not receive the vacation payout he believed he was entitled to, based on the amount of accrued

[6] The parties dispute whether Respondent's established practice ran contrary to the language in § 18.02 of the CBA, which provided for 80 hours of vacation leave *after* one year of employment, accrued at 3.33 hours per pay period. (The Union argues that this language means that Unit employees *accrue* leave during their first year, but cannot *use* their bank of 80 hours of leave until they've completed a year of employment.) Regardless, Respondent's established practice of crediting Unit employees with vacation at the § 18.02 rate during their first year of employment *was* in keeping with the vacation accrual policy of Respondent's predecessor, Trailboss, which awarded its full-time employees like Finney and Tuiletufuga full-time vacation accrual even during their first years of employment. (JX 2, 65:19-66:8, 196:17-25; JX 3, arb UX 7.)

vacation leave reflected on all of his previous pay stubs.[7] (JX 2, arb UX 13; JX 6, arb UX M.) As such, he emailed Respondent's Accounting Manager, Carol Huggins ("Huggins"), about this issue. Through a series of emails on August 11, 2015, Huggins informed Smith that Respondent had been making an ongoing "mistake" in its payroll records ever since Smith and a handful of other "new hires," including Evans, Matthews, and Jones, were brought on. (JX 3, arb UX 12, arb CX 11; JX 6, arb UX E, pp. 18-19, arb UX M.)

Specifically, as Huggins explained in her August 11, 2015 emails to Smith, under the contractual language set forth in § 18.02, Smith and the other new employees should not have been accruing any vacation leave during their first years of employment with Respondent. (JX 2, 26:16-18; JX 3, arb UX 12, arb CX 11; JX 6, arb UX L, arb UX M.) Accordingly, Huggins corrected Smith's and the other affected employees' pay stubs in mid-July 2015 to "zero out" all vacation leave they had accrued during their first year of employment with Respondent, in order to mirror Respondent's new interpretation of the contractual language for vacation accrual set forth in § 18.02.[8] (JX 3, arb UX 29; arb UX 32; JX 5, 434:18-435:8; JX 6, arb UX M, arb UX Z, arb UX AA.) This was done without any prior notice to the Union or even to the affected employees,

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[7] In comparison, Respondent's former Unit employee Carl Wiley ("Wiley") received an initial offer letter into the ATOC position with identical Part Time/Full Time Status language on May 16, 2014, worked full-time hours accruing vacation at the § 18.02 rate throughout his four and a half months of employment, and was cashed out for all vacation hours accrued at the § 18.02 rate upon his resignation from Respondent on about October 2, 2015 – despite that he had not yet completed a year of employment. (JX 2, 304:15-305:18, 307:18-308:19; JX 3, arb UX 23, p. 5; JX 5, 166:3-20; JX 6, arb UX A, arb UX C, pp. 1-2.)

[8] Through a settlement reached by the parties in response to the grievance the Union had filed on Smith's behalf over this vacation leave issue, Smith was ultimately made whole for the vacation leave he was entitled to. (The Union claims the grievance settlement figure was calculated at the § 18.02 rate, while Respondent claims it was calculated at the § 18.01 rate. Apparently, in Smith's case, either approach resulted in the roughly same number of vacation hours.) (JX 2, 166:1-15, 288:5-299:16; JX 3, arb UX 13, pp. 33-35; JX 5, 76:1-4, 78:17-79:3, 94:14-96:4; JX 6, arb UX L, p. 33, pp. 37-41, p. 43.)

all of whom discovered this change on their pay stubs after the fact. (JX 2, 163:10-19; JX 6, arb UX M, arb UX Z, arb UX AA.)

C. In About September 2015, Respondent Discovered that its August 2015 Correction was a Further "Mistake" and, in Response to a Class Action Grievance and without First Bargaining with the Union, Made a Second Set of Changes to Unit Employees' Vacation Leave Accrual and Full-Time Status

In response to the situation brought to light by Smith's email exchange with Respondent, the Union filed a "class action" grievance on behalf of the affected Unit employees on August 24, 2015. (JX 2, 164:18-165:25, 171:8-14, 279:5-280:7; JX 3, arb JX 2, p. 1; JX 5, 85:15-87:3; JX 6, arb UX N.) Respondent's President, Thomas Copeland ("Copeland") and the Union's Business Representative, Jeremy Holan ("Holan"), attempted to resolve the class action grievance short of arbitration. In an email from Copeland to Holan on August 21, 2015, Copeland repeatedly confirmed Respondent's position that new hires like Smith were full-time employees subject to vacation accrual at the rate set forth in § 18.02 of the CBA – just not during their first years of employment. (JX 2, 164:18-165:25; JX 3, arb UX 13, pp. 5-6; JX 6, arb UX L, pp. 5-6.)

However, more than a month later, just before the Step 3 grievance meeting held on September 21, 2015, Respondent's position changed again. By email that same day, Copeland announced a second "correction" regarding the affected Unit employees' accrual of vacation leave, and the parties then discussed Respondent's new position at the Step 3 grievance meeting held that same day. (JX 3, arb JX 2, p. 7, arb UX 13, pp. 37-38; JX 6, arb UX B.) Copeland now took the position that all of the relative new hires (including Smith, Evans, Matthews, and Jones) had been offered part-time employment

and therefore should in fact have been accruing vacation leave during their first years of employment, albeit only at the § 18.01 rate in the CBA for "part-time seasonal" employees. (JX 2, 164:22-24, 165:22-25, 280:8-24; JX 3, arb JX 2, p. 7, arb UX 13, pp. 37-38; JX 5, 93:13-94:8; JX 6, arb UX B.) Copeland claimed that Respondent's Payroll Manager Huggins – who had issued bimonthly paystubs to these employees throughout their employment – simply "didn't know" that Respondent had hired all of these employees as "part-time" employees who would be subject to the § 18.01 rate for "part-time seasonal" employees, and so had made a series of "errors" in their payroll.[9] (JX 2, 27:1-3; JX 5, 434:11-435:9.)

Respondent's new position also adversely impacted two of Respondent's original hires: Finney and Tuiletufuga. Because these two men had accepted internal transfers within the company since their 2012 hire dates, Respondent was now considering them to be "part time" employees, subject to the § 18.01 rate for "part-time seasonals" rather than regular "employees". (JX 1, p. 3; JX 3, arb UX 6, arb UX 10; JX 6, arb UX S, arb UX CC.) In sum, the only Unit employees Respondent considered not subject to the § 18.01 rate for "part-time seasonal" employees were those who Respondent had hired on immediately upon taking over the government contract in October 2012, and who had remained in those original jobs, not accepting internal transfers since.[10]

The Union found it suspect that Respondent was suddenly taking this new position that it had allegedly intended to treat all new hires as "part-time seasonal" employees all along, given that this pronouncement followed more than a month of

[9] Respondent urges the Administrative Law Judge to find that it had simply made 33 months of "mistakes" in Unit employees' pay records. (Tr. 32:22-25, 33:5-7, 37:17-20, 41:25-42:8, 42:11-12, 42:18-19, 76:6-8, 83:6-9, 104:5-7.)

[10] Copeland reiterated Respondent's new position in writing on October 26, 2015. (JX 6, arb JX 2.)

discussions between the parties about the Smith grievance during which Respondent had repeatedly asserted that the new hires were full-time employees subject to the terms of § 18.02. (JX 2, 287:6-12, 312:14-313:5; JX 5, 118:11-119:25.) This new distinction was also confounding to the Union since, as noted, all of Respondent's Unit employees: were provided with identical or nearly identical offer letters upon hire, regardless of their hire dates; were hired under the explicit understanding that they would be full-time employees of Respondent; in fact, did work full-time hours; and had, to this point, received all of the contractual benefits set forth for full-time employees. Most notably, all of Respondent's Unit employees, regardless of their hire dates, had been accruing vacation leave at the full-time rate set forth in § 18.02 of the CBA, as expected, throughout their entire terms of employment with Respondent until this September 2015 announcement.

In light of Respondent's new claim in September 2015 that it had considered these "new hires" to be "part-time" employees subject to vacation accrual at the "part-time seasonal" rate all along, Respondent's Accounting Manager Huggins corrected the payroll records for the new hires yet again, re-crediting them with only the amount of vacation leave they would have earned to that point of their employment at the § 18.01 rate for "part-time seasonal" employees, and initiating their bimonthly accrual of vacation leave at the § 18.01 rate, contrary to its past practice. (JX 3, arb UX 29; arb UX 32; JX 5, 435:8-9; JX 6, arb UX M, arb UX Z, arb UX AA.) At the same time, Huggins also adjusted Finney's and Tuiletufuga's pay stubs to reflect vacation accrued at the § 18.01 rate since their internal transfers. (JX 1, p. 3; JX 3, arb UX 6, arb UX 10; JX 6, arb UX S, arb UX CC.)

This differentiation between new hires and "grandfathered" employees – and particularly, Respondent's claim that the "new hires" were part-time employees who were subject to vacation accrual under § 18.01 as part-time *seasonal* employees – was news to the Union. The Union had never been informed that Respondent considered these "new hires" to be part-time employees (a classification not allowed for under the CBA), let alone part-time seasonals. (JX 3, arb UX 2, p. 7; JX 5, 108:17-111:15, 122:11-23.) Until this September 21, 2015 announcement, none of the paperwork Respondent provided to the Union about these Unit positions indicated that any of the Unit employees hired into these positions would be or were part-time.[11] Thus, all of the Unit employees were on the books at the Union Hall as full-time employees. (JX 2, 194:9-15, 258:23-259:5; JX 5, 111:16-117:24, 152:12-155:5; JX 6, arb JX 2, arb UX F, arb UX G.)

If the Union had recorded any of Respondent's employees as "part-time" (or "part-time seasonal"), as Respondent now claimed is how they were hired, it would have collected membership dues from these employees differently (based only on the actual number of hours worked). (JX 2, 192:1-18; JX 5, 62:16-63:2, 141:2-10.) Arbitrator Snider explicitly found that the first time Respondent ever took the position that the affected Unit members were part-time employees and the first notice the Union received that Respondent intended to treat these employees as part-time was just before the Step 3 grievance meeting held on the Union's class action grievance filed on behalf of

[11] Respondent's President Copeland urged that the Administrative Law Judge take pity on Respondent and forgive its Payroll Department's 33 months of "innocent mistakes" in how it awarded Unit employees vacation leave between October 2012 and July 2015. (Tr. 32:22-25, 33:5-7, 37:17-20, 41:25-42:8, 42:11-12, 42:18-19, 76:6-8, 83:6-9, 104:5-7.)

these employees. (JX 7, p. 15.) As such, this second change had again been made without any prior notice to or bargaining with the Union.

By claiming to have hired "part-time" employees, the Union felt Respondent had violated the CBA's terms providing only for full-time and part-time seasonal employment classifications. Accordingly, on September 28, 2015, just a week after learning about this second change to Respondent's established vacation leave practices, the Union filed its second grievance. (JX 2, 171:15-172:20, 280:24-284:18, 305:19-306:11; JX 3, arb UX 15; JX 6, arb JX 2, arb UX N.)

1. Various "New Hire" Unit Employees Were Impacted by Respondent's Two Sets of Unilateral Changes

Along with Smith, who was the first Unit employee to discover Respondent's changes to its vacation leave practices when he attempted to cash out his accrued vacation leave upon his retirement in early August 2015, several other Unit employees were adversely affected by Respondent's two sets of "corrections" to its "mistakes."

a. Glenda Evans

Unit employee Evans was presented with an offer letter by Respondent on about October 31, 2014, and started work on December 1, 2014, as a Customer Service Gate Agent. (JX 2, 205:3-7; JX 3, arb UX 1, arb UX 3, arb UX 14, arb UX 26; JX 6, arb UX C, pp. 5-6, arb UX H, arb UX W.) Evans testified at both arbitration hearings that she was hired with the explicit understanding that she would be guaranteed at least but likely more than 32 hours of work per week, and that she would not have accepted the position if she had been told it was part-time, since she was moving from Mobile, Alabama to remote and expensive Fairbanks, Alaska, where she knew no one. (JX 2, 208:9-13, 208:20-25, 211:12-23, 229:8-24, 233:5-15; JX 5, 283:15-21, 284:5-25;

300:18-301:24, 306:9-17, 309:8-16.) An insurance document presented to her by Respondent's management upon her hire that reflected that her "effective date of full-time employment" was the 1st of December, 2014, confirmed her understanding. (JX 3, arb UX 27; JX 5, 286:13-288:23; JX 6, arb UX Y.)

From the outset of her employment by Respondent, as expected, Evans worked 32 or more hours every week; earned 3 hours and 20 minutes of vacation leave per pay period, the § 18.02 accrual rate; and in every other way, was treated as a full-time employee under the CBA. (JX 2, 233:16-25; JX 3, arb UX 29; JX 5, 294:19-296:5; JX 6, arb UX AA.)

Evans continued to accrue vacation leave at this rate for seven and a half months until, inexplicably, her pay stub for the pay period covering July 16 through 31, 2015, reflected that she stopped accumulating *any* new vacation leave. (JX 3, arb UX 29; JX 5, 292:11-293:22, 296:6-20; JX 6, arb UX Z.) Simultaneously, Evans' 50 hours of accrued vacation leave reflected in the preceding pay stub had transformed into negative 5 hours of vacation leave. (JX 3, arb UX 29; JX 5, 296:6-20; JX 6, arb UX Z.)

When Respondent announced its second "change" just before the Step 3 arbitration hearing on September 21, 2015, Evans was then credited with the vacation leave she would have accumulated had she been accruing it throughout her employment at the "part-time seasonal" rate set forth in § 18.01; thereafter, she

continued to accrue new vacation leave at the § 18.01 rate.[12] (JX 1, p. 3; JX 3, arb UX 29; JX 6, arb UX AA.) Like the others, Evans was quite surprised to learn that Respondent newly alleged that it considered all of its newer hires to be "part-time" employees (or, apparently, "part-time seasonal" employees subject to § 18.01). (JX 2, 213:18-214:15.)

b. Allen Matthews

Similarly, when Unit employee Matthews was hired by Respondent on November 10, 2014, he was told that he would be working 40 hours per week in his ATOC position. (JX 2, 236:6-9; JX 3, arb UX 1, arb UX 14, arb UX 31; JX 5, 185:18-186:9; JX 6, arb UX H.) Matthews interpreted this promise of 40 hours of work per week to mean he was a full-time employee. He was never told upon his hire that despite working full-time hours as defined under the CBA, Respondent considered him to be part-time. (JX 5, 186:10-17, 187:20-188:6, 198:10-11.) Throughout Matthews' employment, Respondent kept its promise that he would work 40 hours every week. (JX 3, arb UX 32; JX 5, 193:11-18, 195:6-10.)

From the outset of Matthews' employment, as was the case for all of the affected Unit employees before the changes at issue, Matthews accumulated vacation leave at the § 18.02 rate. (JX 3, arb UX 32.) This continued for about eight months, from his hire date through the pay period spanning July 1 through 15, 2015, for which his pay stub reflected 56 hours and 40 minutes of vacation leave available. (JX 3, arb UX 32.)

[12] Pursuant to the Ahearn Award (JX 4), Respondent has recently resumed awarding Evans vacation leave at the § 18.02 rate, starting with her second year of employment, and has credited her with the vacation hours she would have earned at that rate beginning on about October 31, 2015 (her one-year anniversary date). However, Evans has not been made whole to date for the vacation leave she should have accumulated at the § 18.02 rate during her first year of employment, based on Respondent's past practice between 2012 and 2015. (Tr. 124:17-125:5; JX 1, p. 4.) In addition, although Ahearn's Award had directed that Respondent "re-classify" the affected employees as full-time employees for all other intents, the Union is concerned whether this has been done. (JX 4, p. 14.)

Then, for the pay period covering July 16 through 31, 2015, just like Evans', Matthews' pay stub suddenly reflected 0 hours vacation leave earned and 0 hours of vacation leave available. (JX 3, arb UX 32; JX 5, 189:9-18, 190:12-16.) His pay stub for the pay period spanning August 1 through 15, 2015, reflected the same: 0 hours vacation leave accrued in that pay period, and 0 total hours of vacation leave available. (JX 3, arb UX 32.)

Soon thereafter, when Respondent discovered and corrected its second "mistake," starting in the pay period spanning August 16 through 31, 2015, Matthews was credited with 62.02 hours of vacation leave – apparently what he would have earned throughout his employment up to that date, but at the § 18.01 accrual rate allocated for "part-time seasonal" employees. (JX 1, p. 3; JX 2, 236:10-14; JX 3, arb UX 32; JX 5, 192:20-22.) Despite not being a part-time or seasonal employee, Matthews then began to accrue vacation leave going forward at that § 18.01 rate.[13] (JX 1, p. 3; JX 3, arb UX 32.)

c. Chris Jones

Jones, another full-time Unit employee at the time, was also affected by Respondent's "corrections" when his pay stubs for these same July and August pay periods in late summer 2015 reflected an abrupt loss and then replacement of accrued vacation leave and changes to his vacation accrual rate going forward. However, while

[13] Pursuant to the Ahearn Award (JX 4), Respondent has recently resumed awarding Matthews vacation leave at the § 18.02 rate, starting with his second year of employment, and has credited him with the vacation hours he would have earned at that rate beginning on about November 10, 2015 (his one-year anniversary date). However, like Evans, Matthews has not been made whole to date for the vacation leave he should have accumulated at the § 18.02 rate during his first year of employment, based on Respondent's past practice between 2012 and 2015 . (Tr. 124:17-125:5; JX 1, p. 4.) In addition, although Ahearn's Award had directed that Respondent "re-classify" the affected employees as full-time employees for all other intents, the Union is concerned whether this has been done. (JX 4, p. 14.)

the relevant grievances were moving forward toward arbitration, Jones became a supervisor for Respondent. (JX 1, p. 4; JX 5, 43:6-7, 98:14-102:23.)

2. Longtime Unit Employees Finney and Tuiletufuga Were Also Impacted by Respondent's Second Set of Unilateral Changes

There were two additional employees who were adversely affected by Respondent's second change to its established vacation leave practices: Finney and Tuiletufuga. Unlike Smith, Evans, Matthews, and Jones, Finney and Tuiletufuga were longtime employees of Respondent's predecessors. However, subsequent to their initial hire by Respondent in 2012, they each transferred internally to new positions. It was ostensibly due to these internal transfers, despite their many years of combined service to Respondent and its predecessors, that Respondent asserted in September 2015 that Finney and Tuiletufuga had been demoted to "part-time seasonal" positions when they were "re-hired" into their new roles. Thus, Respondent determined they were entitled to vacation leave accrual only under the § 18.01 rate in the CBA rather than the § 18.02 rate to which they were accustomed. (JX 3, arb CX 6.)

a. Phillip Finney

Unit employee Finney, who had worked for Respondent's predecessors as an air freight controller since December 2006, was hired in that same role by Respondent immediately upon its taking over the government contract in October 2012. (JX 2, 39:14-40:11, 41:19-42:2, 51:12-18; JX 3, arb UX 1, arb UX 2, arb UX 14; JX 5, 314:13-315:13; JX 6, arb UX H, arb UX BB.) Finney had been a full-time employee with Respondent's predecessors, and was told by Respondent's then-Site Manager, Tharin

Thomas, that his employment would continue with Respondent under identical terms.[14] (JX 2, 39:23-40:11, 43:18-44:16, 51:12-15, 51:21-52:21, 61:19-23, 73:14-17, 78:18-79:11; JX 3, arb UX 1; JX 5, 320:4-321:6, 329:16-24, 338:23-339:10.)

Upon his hire, Respondent presented Finney with an offer letter dated September 28, 2012, with the "Part Time/Full Time Status" language quoted above. (JX 3, arb UX 2.) However, based Thomas' assurance upon his hire, Finney thought nothing of this language in his initial offer letter from Respondent. His lack of concern turned out to be justified: as he expected, from the outset of his employment, Finney's pay stubs reflected that he immediately began to accrue vacation leave at the rate set forth at § 18.02 of the contract, and he was in all other ways treated as a regular full-time employee for contractual purposes. (JX 2, 75:11-15, 78:18-79:11, 144:8-146:20; JX 3, arb UX 6, arb UX 10; JX 5, 346:11-347:13; JX 6, arb UX CC.)

In August 2015 – nearly three full years later – after Finney suffered an injury, had hip surgery, and had depleted much of his sick leave, Finney decided to transfer internally from his longtime air freight position to an open ATOC job with Respondent that did not require a doctor's release and was not a physical job. (JX 2, 38:23-39:1, 41:3-18, 52:22-53:9; JX 5, 321:19-322:15.) The offer letter Finney signed for the ATOC position, dated August 14, 2015, contained the identical "Part Time/Full Time Status" language from his original 2012 hire letter. (*Compare* JX 3, arb UX 2, *with* JX 3, arb UX 5.) As such, as with his initial hire into the air cargo role in 2012, Finney again accepted this offer under the understanding that he would be a full-time employee. (JX 2, 54:7-11, 82:25-84:9; JX 5, 322:16-323:7.) The guaranteed hours set forth in the offer letters

[14] In fact, Respondent's President Copeland had also worked for Respondent's predecessor, CAV. (JX 2, 73:14-25, 90:14-16; JX 5, 238:9-16, 347:5-14.)

– 32 to 40 – were the same. (JX 2, 84:14-16.) In fact, in the ATOC role, Finney worked a minimum of 40 hours a week, including in his first pay period in that role, compared to his regular minimum of 32 hours in the air cargo role. (JX 2, 53:12-16, 54:12-14, 61:16-18; JX 3, arb UX 6, arb UX 10; JX 5, 336:9-11, 348:6-349:15; JX 6, arb UX CC.)

However, this time, Finney noticed that he had accumulated vacation leave only at the part-time seasonal rate set forth in § 18.01 in his very first pay stub after starting in the ATOC job, for pay date September 4, 2015. (JX 2, 54:15-55:3, 58:7-20; JX 3, arb UX 6, arb UX 10; JX 5, 323:8-324:24; JX 6, arb UX CC.)

When Finney notified Respondent's Assistant Station Manager, Dave Emig ("Emig"), about this discrepancy, Emig was as surprised as Finney and said he would look into it and get him an answer. (JX 2, 59:18-60:7; JX 5, 339:11-340:1.) When Emig looked into it, he learned that Respondent claimed that ever, since Finney had started in the ATOC role, Respondent had considered him a "part-time" employee subject to the "part-time seasonal" vacation accrual rate set forth in § 18.01 of the CBA. Although Emig had presented Finney with the ATOC job offer letter in the first place, he told Finney he had no idea why Finney's full-time status or his vacation accrual rate would have abruptly changed when he took on that role. (JX 2, 60:17-20, 67:20-25, 73:2-6; JX 5, 340:16-17.)

Nevertheless, Respondent's Payroll Department thereafter continued to credit longtime employee Finney with vacation accrual at only at the § 18.01 rate for "part-time seasonal" employees. (JX 1, p. 3; JX 2, 71:17-72:18, 73:7-13; JX 3, arb UX 6, arb UX 10; JX 6, arb UX CC.) Respondent made this change despite that Finney had continued to work full-time hours (in fact, more than 40 hours per week), just like before,

and despite the fact that Finney had never been informed he was taking on a "part-time seasonal" role. (JX 2, 53:12-16, 54:12-14, 61:16-18, 84:14-16; JX 3, arb UX 6, arb UX 10; JX 5, 336:9-11, 348:6-349:15; JX 6, arb UX CC.) Rather, the description of his employment status in his offer letter was identical to the description of his status from his initial offer letter into a full-time role subject to § 18.02 vacation accrual. (*Compare* JX 3, arb UX 2, *with* JX 3, arb UX 5.)

Finney was very confused by Respondent's sudden announcement that his employment status had changed. (JX 2, 61:2-12.) To make matters worse, despite his belief that he would be able to return to his original job once he fully recovered from his hip injury, upon his recovery, when Finney did attempt to go back to his longtime air freight position, he was told by Respondent that the position was not available.[15] (JX 2, 82:13-16, 85:7-18.)

b. Richard Tuiletufuga

Unit employee Tuiletufuga similarly required an injury-related internal transfer to an ATOC position during his employment with Respondent, although Respondent initially treated his job status and vacation accrual in the ATOC role quite differently.

Tuiletufuga started with Respondent's predecessor, Trailboss, in 2007, and then was hired by its other predecessor, CAV International, in 2008. (JX 2, 90:8-22; JX 3, arb UX 1, arb UX 14; JX 5, 238:5-20.) When Respondent took over the government contract five years later, Tuiletufuga, like Finney, was immediately hired on by

[15] Thereafter, Finney continued to accrue vacation leave in this role at only the § 18.01 rate for "part-time seasonal" employees. However, pursuant to the Ahearn Award (JX 4), Respondent has recently resumed awarding Finney vacation leave at the § 18.02 rate, and Finney has been credited with all leave he should have accrued in the ATOC role at the § 18.02 rate. (JX 1, p. 4.) Although Ahearn's Award had directed that Respondent "re-classify" the affected employees as full-time employees for all other intents, the Union is concerned whether this has been done. (JX 4, p. 14.)

Respondent in his existing air freight position. (JX 2, 90:22-25, 91:6-12; JX 3, arb UX 1, arb UX 8, arb UX 14; JX 5, 239:11-13; JX 6, arb UX D, arb UX H; JX 9, pp. 1-2.)

Like Finney's, Tuiletufuga's initial offer letter in 2012 included the same "Part Time/Full Time Status" language, which he thought nothing of, since he and all of the other initial hires understood from communications by Respondent's management that Respondent was taking them on under employment terms identical to those of its predecessor. (JX 2, 92:21-93:8; JX 3, arb UX 8; JX 5, 239:23-240:14; JX 6, arb UX D.) Respondent's Station Manager Jeff Carpenter ("Carpenter") had assured Tuiletufuga of his continued full-time status repeatedly during the takeover. (JX 2, 96:11-14, 97:4-16.) In fact, Tuiletufuga went directly to Carpenter upon receiving this 2012 offer letter and asked what the Part Time/Full Time language in the letter meant. Carpenter told Tuiletufuga that this language did not change his employment terms; he continued to be full-time and was not newly in a part-time status with Respondent. (JX 98:2-11, 121:22-122:7.) That was correct: Tuiletufuga accrued vacation leave without incident at the § 18.02 rate from day one. (JX 3, arb UX 10; JX 6, arb UX S, arb UX U.)

Tuiletufuga also had a surgery, like Finney, but over a year earlier than Finney (in May 2014). At that time, Tuiletufuga similarly transferred to the identical less-physical ATOC position, where he worked until August 2014. (JX 2, 91:1-3, 93:23-95:19; JX 6, arb UX V; JX 9, pp. 3-6.) Tuiletufuga's May 2014 offer letter for the ATOC position included the identical "Part Time/Full Time Status" language as Finney's August 2015 ATOC position offer letter. (*Compare* JX 3, arb UX 5, *with* JX 6, arb UX V.) Upon reading through this May 2014 offer letter, Tuiletufuga was concerned and approached Carpenter again about what these terms meant. Carpenter again informed Tuiletufuga

that this was merely a form letter that was identical to his previous offer letter, that nothing had changed, and that he remained a full-time employee while in the ATOC role.[16] (JX 2, 123:3-11, 127:6-128:15, 252:19-256:25; JX 5, 56:5-19, 58:7-18, 128:24-131:24; JX 5, 243:5-245:8, 262:10-22.)

In light of Carpenter's assurance, Tuiletufuga disregarded this language and expected to continue in his full-time status, accumulating vacation leave at the § 18.02 rate while in the ATOC role. As promised, throughout these three months in summer 2014 in the ATOC role, Tuiletufuga did, in fact, accrue vacation at the § 18.02 rate.[17] (JX 2, 96:23-97:3; JX 3, arb UX 10; JX 6, arb UX S, arb UX U.) Three months later, after Tuiletufuga returned to his identical previous air freight/air cargo specialist position in August 2014 and received *another* offer letter with the identical "Part Time/Full Time Status" language, nothing changed; he remained full-time and continued to accrue vacation leave at the § 18.02 rate. (JX 2, 95:15-96:22, 98:14-99:4, 135:6-22; JX 3, arb UX 10; JX 5, 246:8-247:12; JX 6, arb UX S, arb UX U; JX 9, pp. 5-6.)

It wasn't until around August 2015, almost a year and a half after Tuiletufuga first took the three-month transfer to the ATOC position, that his vacation accrual changed. Given Respondent's new position that only employees hired in October 2012 had been

[16] In fact, Tuiletufuga approached the Union about this matter in May 2014 intending to file a grievance, but he calmed down and decided not to after Carpenter assured him that the Part Time/Full Time Status language in this letter was identical to that in his initial offer letter, neither of which did or would suddenly alter his full-time status. Thus, at the time, the Union determined, based on this assurance, that this was simply a form letter which Respondent did not intend to enforce, and that Respondent understood that the terms of the CBA would prevail and that it could not suddenly violate the CBA by subjecting full-time Unit employees like Tuiletufuga to the § 18.01 vacation accrual rate. And, in fact, Respondent did not attempt to do so until more than a year later. (JX 2, 252:19-256:25, 258:11-18, 259:24-260:15, 272:17-273:10; JX 5, 56:5-19, 128:24-131:24, 215:4-17, 216:6-17, 261:19-262:24.) Emig had also confirmed with both Finney and Union Steward Kenneth Johnson that all Unit employees receiving these letters were full-time employees. (JX 5, 225:9-14, 229:1-24.)

[17] Of course, as discussed, this language was also present in both men's initial hire letters upon Respondent's takeover of the government contract in October 2012 – along with those of all of Respondent's initial hires – and they had each accrued vacation leave at the § 18.02 rate ever since Respondent hired them.

"grandfathered" into full-time positions subject to § 18.02, even Tuiletufuga was impacted. Thus, Tuiletufuga, who was hired in October 2012 but had since taken a temporary three-month transfer to the ATOC position before returning to his longtime air freight job, was being treated as a "part-time seasonal" employee subject to § 18.01. Tuiletufuga first heard about this from through other employees, who had discovered discrepancies in their pay stubs. (JX 2, 99:5-9, 101:11-14; JX 5, 276:10-22.) Tuiletufuga testified clearly at arbitration that this was the very first time he had been told by anyone that Respondent considered him to be a "part-time" employee. (JX 2, 99:5-9; JX 5, 251:19-252:4.) Tuiletufuga then checked his own pay stub and confirmed that, for the pay period spanning from August 16 to 31, 2015, he had no longer accrued *any* vacation time. (JX 3, arb UX 10; JX 5, 249:13-250:21; JX 6, arb UX S.)

Like Finney, Tuiletufuga immediately reported this to Respondent's Assistant Station Manager Emig (since Carpenter no longer worked for Respondent by summer of 2015). Emig told Tuiletufuga that he had no idea what he was talking about, but that he would look into it. (JX 2, 99:9-100:7; JX 5, 270:21-271:1, 273:1-18, 276:23-277:4.) In fact, Emig's initial response was that he thought Tuiletufuga was lying about what his pay stubs suddenly reflected. (JX 2, 111:8-16.)

Despite the affected Unit employees' and direct management's confusion about this, in light of Copeland's claim that Respondent had made 16 months of "mistakes" in longtime employee Tuiletufuga's pay stubs, it abruptly changed his vacation leave accrual rate to that set forth in § 18.01 for "part-time seasonal" employees, adjusted his accrued vacation leave to reflect accrual at the § 18.01 rate from May 2014 through the current date in August 2015, and thereafter, began to award him vacation leave accrual

at the lesser § 18.01 rate. (JX 1, p. 3; JX 2, 108:11-109:23; JX 3, arb UX 10; JX 6, arb UX S.)

In other words, despite that Tuiletufuga had returned to his identical previous air freight/air cargo specialist position upon his full recovery from surgery in August 2014, a position that Respondent would have considered full-time and subject to § 18.02 if only he had not temporarily transferred to a different role within the company, Respondent treated Tuiletufuga's temporary, three-month transfer into the ATOC position as having nullified his history with Respondent and somehow rendered him a "part-time seasonal" employee subject to the lesser § 18.01 vacation accrual rate indefinitely into the future.[18] (JX 1, p. 3.)

D. Throughout 2014 and 2015, Respondent Issued Job Offer Letters to Unit Employees that Set Forth Employment Terms in Contravention of the CBA

Ever since taking over the government contract in October 2012, Respondent has issued job offer letters to all Unit employees it has hired.[19] (JX 3, arb UX 2, arb UX 8, 14, arb UX 25, arb UX 33, arb UX 35; JX 6, arb UX D, arb UX E, arb UX H, arb UX BB; JX 9, pp. 1-2.) Between April 2014 and August 2015, Respondent issued at least seven job offer letters to Unit employees, including "new hires" and longtime employees transferring into new positions. These 2014 and 2015 offer letters read, in relevant part:

[18] Thereafter, Tuiletufuga continued to accrue vacation leave in this role at only the § 18.01 rate for "part-time seasonal" employees. However, pursuant to the Ahearn Award (JX 4), Respondent has recently resumed awarding Tuiletufuga vacation leave at the § 18.02 rate, and Tuiletufuga has been credited with all leave he should accrued in the ATOC role (and since) at the § 18.02 rate. (JX 1, p. 4.) Although Ahearn's Award had directed that Respondent "re-classify" the affected employees as full-time employees for all other intents, the Union is concerned whether this has been done. (JX 4, p. 14.)

[19] At both arbitration hearings and at the unfair labor practice hearing, Respondent's President Copeland testified extensively and repeatedly about the government regulations requiring Respondent, a government contractor, to issue offer letters to its new hires. (*E.g.*, Tr. 52:19-53:5.)

> … [Y]our employment will be at will, and neither this letter nor the previous signed Employee Guidelines are intended to create a contract or other guarantee of employment or employment terms…
> …
> 4. Miscellaneous: Except where otherwise stated or required by law, the terms and conditions of your employment will be set by C2G Ltd. Co. Thus, while C2G Ltd. Co will continue to provide economic terms included in the CBA [sic]. Any initial terms and conditions of employment not already mandated by law or addressed in this letter or the enclosed Employee Guidelines will be in accordance with C2G Ltd. Co. standard policies, procedures and/or practices. Of course, the Company reserves the right to the maximum extent permitted by law to alter or amend in its sole discretion the terms and conditions of employment and its employment policies and procedures.

(JX 3, arb UX 5, arb UX 26, arb UX 31; JX 6, arb UX C, pp. 1-15, arb UX E, pp. 18-19, arb UX V; JX 9, pp. 3-6.)

Although Respondent had used offer letters with similar language since 2012, the Union had previously believed, based on assurances from management, that these letters were merely form letters Respondent had failed to update upon reaching the CBA, which were not intended to contradict the CBA or to change any employees' employment status, absent a more express understanding to that effect. (JX 2, 252:19-258:18, 259:24-260:15, 272:17-273:10; JX 5, 56:5-19, 58:7-18, 128:24-131:24, 132:11-134:2.)

However, on September 21, 2015, when Respondent's President Copeland suggested that the previously unenforced "Part Time/Full Time Status" language in the 2014 and 2015 offer letters put the Unit employees receiving these letters on notice that they were being hired as "part-time" or "part-time seasonal" employees entitled only to § 18.01 vacation accrual, the Union realized there was a problem: Respondent was newly enforcing its interpretation of some of the terms set forth in these letters,

effectively changing Unit employees' terms and conditions of employment as set forth under the CBA. (JX 2, 258:11-18.)

Both Arbitrators found this problematic. Arbitrator Ahearn concluded,

> With respect to the Employer's argument that various employees are properly classified as "part-time seasonals," no employee ever received a letter from the Employer expressing that such was their classification. Although the letters offering jobs to the employees stated that the offers were for part-time work, the employees did not understand the offers were for part-time and the Employer did not apply the CBA in this manner. Further, to the extent that the term ["part-time seasonal"] was ever discussed during negotiations, the concern was directed to peak exercises such as "Red Flag" rather than year-round. With respect to particular employees such as Evans, her testimony that during her job interview she was guaranteed 32 hours per week demonstrates that the Employer was offering a full-time position… Under the circumstances it is abundantly clear that all employees are full-time regardless of any implications in the form letters employees received as their offer of employment. Accordingly, the relief should include reclassification of the named employees to full-time status and restoration of any benefits they may have lost because of the change.

(JX 4, pp. 13-14.) Similarly, Arbitrator Snider determined that,

> Despite the language of the job offer letters, prior to September 20 or 21, 2015 the Union had no reason to believe that the bargaining unit employees at issue in this grievance had been hired as part-time employees. On those dates the Union and bargaining unit employees were for the first time informed that all employees were considered part-time employees and would be considered as such. Accordingly, the Arbitrator concludes that September 20, 2015 is the date of the occurrence upon which the grievance is based pursuant to Section 11.02, and that the grievance filed on September 28 was therefore timely.

(JX 7, p. 15.)

On November 4, 2015, just over a month after Copeland's problematic announcement, the Union filed the instant charge in Case 19-CA-163444 alleging that, by issuing offer letters to Unit employees in 2014 and 2015 with the above-quoted terms, Respondent violated the Act.

III. ARGUMENT

A. By Making its Two Sets of Unilateral Changes in August and September 2015, Respondent Violated §§ 8(a)(1), (3), and (5) of the Act

By making two sets of unilateral changes to its established past practices regarding Unit employees' accrual of vacation leave and full-time status in August and September 2015, Respondent violated the Act.

1. Respondent Violated §§ 8(a)(1) and (5)

As described in detail above, at the two arbitration hearings, the affected Unit employees testified that they were verbally assured that regardless of what their offer letters said, they were being hired into full-time roles. Further, as the record evidence shows, throughout their employment, until late summer 2015, Respondent in fact did treat all of its Unit employees as full-time: they worked full-time hours, year round; and they received all of contractual benefits for full-time employees – including vacation leave accrued at the § 18.02 rate (even during their first years of employment.[20] These practices surrounding Unit employees' full-time status and method of vacation accrual continued from October 2012 through July 2015, and were reflected on each and every affected Unit employee's bimonthly pay stubs for a period of months or years in some cases.

The Board has found a past practice to have been effectively established where it persevered for seven months. *Prime Healthcare Services-Encino, LLC*, 364 NLRB

[20] Even assuming, *arguendo*, that all parties (Respondent, the Union, and the affected Unit employees) mutually understood that the Unit employees in question were "part-time," the letters suggest "Part Time/Full Time Status," not "part-time seasonal" status, which is the only classification of employees to which § 18.01 vacation accrual applies. There is no evidence in the record that any of the affected employees were ever informed they were being hired as "part-time seasonal" employees entitled only to vacation leave accrued under § 18.01 (until September 2015).

No. 128 (2016). Thus, Respondent's treatment of Unit employees between October 2012 and July 2015 – a span of approximately 33 months – clearly established past practices that required notice to and bargaining with the Union before any changes were made. By abruptly taking away earned leave, changing Unit employees' established vacation accrual rates, and informing Unit employees for the first time that it considered them to be "part-time," without first notifying the Union and giving it a chance to bargain over these matters, Respondent made significant unilateral changes to its established past practices which Unit employees had come to rely on.

As with its "form letter" defense to the allegations regarding the unlawful job offer letters, Respondent's President Copeland urged that the Administrative Law Judge take pity on Respondent and forgive its Payroll Department's 33 months of "innocent mistakes" in how it awarded Unit employees vacation leave between October 2012 and July 2015. However, Board law precludes such an analysis.

First, as the Union made clear at arbitration, it is hard to believe Respondent's current position that it actually intended to treat all of its relative "new hires" as part-time employees or part-time seasonals all along, considering the fact that for more than a month during the processing of the initial Smith grievance, Respondent had repeatedly maintained that the new hires were full-time employees subject to § 18.02. Further, these employees had been and even after this announcement have continued to be treated in every other way as full-time employees by Respondent: they were told they would be full-time; they were guaranteed full-time hours, *unlike* part-time seasonals; they in fact did work full-time hours; they were hired and worked throughout the year, not just within any one busy season; and they had accrued vacation leave at the

§ 18.02 rate throughout their terms of employment, until September 2015. Thus, Respondent's claim that this was all a big mistake seems untenable.

More importantly, though, regardless of whether this was all a "mistake" or not, Board law is clear: even a long-running mistake in interpreting or enforcing contractual language can create contrary past practices that must be bargained over before any changes are made. In fact, the Board has repeatedly found "mistakes" of similar lengths of time to constitute new past practices that the Board will enforce until bargaining occurs, regardless of any applicable CBA provisions. See, e.g., *Prime Healthcare Services-Encino, LLC*, 364 NLRB No. 128 (2016) (employer's unilateral "correction" to be unlawful where employer had mistakenly but repeatedly and regularly granted contractual wage increases for seven months after CBA requiring such had expired); *Garden Grove Hosp. & Med. Ctr.*, 357 NLRB No. 63 (2011) (employer's nine months of "mistakes" in granting sick leave established a new past practice, any change to which must have been bargained with the union).

Thus, by announcing and implementing these two sets of changes to its long-established practices surrounding Unit employees' accrual of vacation leave in August 2015 and September 2015, and by changing its "new hires'" employment status from full-time to part-time in September 2015, all without first notifying or bargaining with the Union, Respondent violated §§ 8(a)(1) and (5) of the Act.[21]

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[21] Respondent also claims that its past practices of treating all affected Unit employees as full-time and granting all affected Unit employees § 18.02 vacation accrual, including during their first years of employment, were not "knowing[ly]" established. However, as evidenced by the above-cited "mistake" case law, the Board does not require that a practice be established "knowingly" – just that it, in fact, be established. Further, the Board certainly does not require that every level of an employer's management from direct supervision to the Board of Directors be aware of the practice in order to find that it has been established. After all, Respondent means only that *Copeland* (allegedly) didn't know. However, Respondent's Accounting Manager Huggins certainly did, as she inputted this information into each and every single employee's pay stubs for each bimonthly pay period between October 2012 and August 2015.

2. Respondent Violated §§ 8(a)(1) and (3)

In order to establish unlawful discrimination under §§ 8(a)(1) and (3) of the Act, the General Counsel must demonstrate by a preponderance of the evidence that employees were engaged in protected activity, that the employer had knowledge of that activity, and that the employer's hostility to that activity "contributed to" its decision to take an adverse action against the employee.[22] *Director, Office of Workers' Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 278 (1994), *clarifying NLRB v. Transp. Mgt.*, 462 U.S. 393, 395, 403 n.7 (1983); *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd. on other grounds* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

Evidence that may establish a discriminatory motive – *i.e.,* that the employer's hostility to protected activity "contributed to" its decision to take adverse action against the employee – includes close timing between the discovery of the employee's protected activities and the discipline. *See, e.g., Traction Wholesale Ctr. Co., Inc. v. NLRB*, 216 F.3d 92, 99 (D.C. Cir. 2000). The Board also considers evidence that the employer's asserted reason for the employee's discipline was pretextual. *See, e.g*., *Lucky Cab Co.*, 360 NLRB No. 43 (Feb. 20, 2014); *ManorCare Health Services – Easton,* 356 NLRB No. 39, slip op. at p. 3 (Dec. 1, 2010); *Greco & Haines, Inc.,* 306 NLRB 634, 634 (1992); *Wright Line*, 251 NLRB at 1088, n.12, citing *Shattuck Denn Mining Co. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Cincinnati Truck Center*, 315 NLRB 554, 556-557 (1994), *enfd. sub nom. NLRB v. Transmart, Inc.*, 117 F.3d 1421 (6th Cir. 1997).

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[22] Once the General Counsel has established that the employee's protected activity was a motivating factor in the employer's decision, the employer can nevertheless defeat a finding of a violation by establishing, as an affirmative defense, that it would have taken the same adverse action even in the absence of the protected activity. See *NLRB v. Transportation Mgt.*, 462 U.S. at 401. The employer has the burden of establishing that affirmative defense. *Id*.

Here, it is undisputed that the Union had filed a class action grievance on August 24, 2015, over Respondent's first change, first announced by Huggins in August 2015, and that the grievance had been discussed by the parties in writing over the following weeks and ultimately set for a Step 3 meeting on September 21, 2015. Thus, by September 21, 2015, Respondent was well aware that the employees – through their Union – were engaged in protected activity.

The filing and processing of this class action grievance clearly contributed to Respondent's decision to announce and unilaterally implement its second set of changes to employees' working conditions in September 2015. After all, after more than a month of clinging to its position that its new hires were full-time employees subject to vacation accrual under § 18.02 of the CBA (just not within their first years of employment), Respondent did an outright about-face after the class action grievance was filed. Respondent changed its position entirely when it asserted immediately before the Step 3 grievance meeting held September 21, 2015 that these employees were actually "part-time" employees entitled only to the lesser vacation accrual rate assigned to "part-time seasonal" employees under § 18.01 of the CBA. Thus, Respondent's position inexplicably changed less than a month after the Union filing the class action grievance, *on the day of* a significant meeting between the parties about this grievance.

Further, Respondent took this new position despite the extensive evidence in the record that its new hires had been treated as full-time employees under the CBA for all intents and purposes throughout their entire tenure of employment to that point. The extensive record evidence to this effect demonstrates that Respondent's asserted

motivation for making this second change – that it allegedly was correcting a long-running "mistake" – was pretextual, as the evidence appears to show that the "reasons given for the employer's actions [we]re … either false or not in fact relied upon …." *Rood Trucking Co*., 342 NLRB 895, 897-98 (2004). In fact, by making this second change to its established past practice in response to the Union's filing of the class action grievance, Respondent adversely affected two additional, longtime Unit employees – Finney and Tuiletufuga – who Respondent newly claimed had been re-hired into part-time or part-time seasonal roles when they took internal transfers, despite any evidence that either employee (or the Union) had ever been informed of or treated as such. Respondent's expansion of its first unilateral change to also impact two longtime bargaining Unit members demonstrated its animus against Unit employees' protected activities in protesting the first change through their collective bargaining representative.

In light of the record evidence of pretext, timing, and animus discussed above, the General Counsel respectfully submits that Respondent violated §§ 8(a)(1) and (3) of the Act by radically changing its position on the employment status of its "new hires" and transferred employees and committing its second unilateral change to its practices surrounding Unit employees' vacation accrual on September 21, 2015.

B. By Sending its 2014 and 2015 Offer Letters to Unit Employees, Respondent Violated §§ 8(a)(1) and (5) of the Act

By issuing offer letters to Unit employees throughout 2014 and 2015 that set forth employment terms in contravention of the CBA, Respondent violated both §§ 8(a)(1) and (5) of the Act.

1. Respondent Violated § 8(a)(1)

Under § 8(a)(1) of the Act, it is an unfair labor practice for an employer to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." 29 U.S.C. § 158(a)(1). The test for determining whether conduct violates § 8(a)(1) is "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *American Freightways Co., Inc.*, 124 NLRB 146, 147 (1959). The test is objective, not subjective, and does not turn on the employer's motive or on whether the coercion succeeded or failed. *Multi-Ad Services*, 331 NLRB 1226, 1227-28 (2000), enfd. 255 F.3d 363 (7th Cir. 2001); *American Freightways Co., Inc.*, 124 NLRB at 147 (1959).

As discussed above, between April 2014 and August 2015, Respondent issued at least seven job offer letters to Unit employees, including both "new hires" and longtime employees transferring into new positions, like Finney and Tuiletufuga. (JX 3, arb UX 5, arb UX 26, arb UX 31; JX 6, arb UX C, pp. 1-15, arb UX E, pp. 18-19, arb UX V; JX 9, pp. 3-6.) These offer letters informed Unit employees, in writing, that their employment with Respondent would be "at will" – despite the just cause clause at § 10.01 of the CBA in existence at the time, which granted Unit employees protection from discipline or discharge by Respondent without proven just cause.

In addition, these 2014 and 2015 letters indicated that Respondent did not intend to create any contract or other guarantee of employment or employment terms by offering employment to these Unit employees. Such a disclaimer was totally at odds with Respondent's relationship with the Union, and, particularly, with the existence of

the CBA covering the Unit employees receiving the letters, which did guarantee the employees certain terms and conditions of employment.[23]

The offer letters further stated that while Respondent would follow the economic terms in the negotiated CBA, it would otherwise set all terms and conditions of these Unit employees' employment and could alter or amend them in its sole discretion. Again, this language was directly at odds with the fact that Respondent had (and has) a collective bargaining relationship and obligation under the Act to notify and bargain with the Union over any and all changes to Unit employees' terms and conditions of employment. By specifically referencing the CBA's economic terms while reserving the right to unilaterally change any other employment terms, a reasonable employee reading the letters would surmise that Respondent was asserting that it could and might violate the CBA's non-economic provisions.

Although Respondent had used job offer letters with similar language since 2012, Respondent's management had routinely assured Unit employees and the Union itself that these were merely form letters Respondent had failed to update upon reaching the CBA, which were not intended to contradict the CBA or to change any employees' employment status. As such, the Union had not been concerned that either management or Unit employees took this language seriously. However, Copeland's September 21, 2015 claim that the specific terms of the 2014 and 2015 letters containing this language had allegedly put Unit employees on notice that they were being hired into "part-time" roles changed all this.

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[23] As set forth *supra,* Respondent recognized the Union as the collective bargaining representative of its Unit employees immediately upon taking over the government contract in October 2012, and the parties then quickly negotiated for and reached a collective bargaining agreement in October 2012 that remained in effect from October 1, 2012, through September 30, 2016. (JX 3, arb JX 1; JX 6, arb JX 1).

It goes without saying that the job offer letters Respondent sent to Unit employees in 2014 and 2015 undermined the Union's authority and coerced Unit employees in their exercise of § 7 rights. The letters made the Union look weak and made it seem that seeking its assistance or representation would be futile, since Respondent had all the power and could terminate Unit employees' employment or change their terms and conditions for any reason, without bargaining, despite the protections of the existing CBA between the parties. In light of Respondent's abrupt September 2015 assertion that it was relying on the terms in the offer letters to support its position that Unit employees had been hired into "part-time" roles, it would be reasonable to expect that Respondent had a different, and adverse, take on their other rights (or lack thereof) under the CBA. As such, the Union had no choice but to file its charge alleging that the language in the offer letters Respondent had issued between April 2014 and August 2015 violated the Act by coercing employees in the exercise of their § 7 rights.

Respondent may argue that since it had issued offer letters with similar language ever since it took over the government contract in 2012, the allegations in the Complaint pertaining to the more recently-issued offer letters are barred as untimely under § 10(b). Respondent would be mistaken. In Board cases alleging breaches of the collective bargaining agreement, rather than complete repudiation of the collective bargaining relationship, each successive breach constitutes a separate unfair labor practice independent of any previous breach. In other words, the fact that some breaches may have occurred outside the § 10(b) period does not bar a finding that the breaches

occurring within the § 10(b) period violated the Act. *Vallow Floor Coverings, Inc.*, 335 NLRB 20 (2001).

Further, under the Board's "continuing violation" theory, when evidentiary support for a violation exists within the six-month period prior to the filing of the charge, and the violation can be proven without reliance on any evidence of similar occurrences prior to that period, § 10(b) cannot insulate a Respondent from a finding of a violation. *Machinists Local 1424 v. NLRB*, 362 U.S. 411, 419 (1959); *Bryan Mfg.,* 362 U.S. 411, 416-417 (1960). *See also Farmingdale Iron Works*, 249 NLRB 98 (1980), enfd. mem. 661 F.2d 910 (2d Cir. 1981) (employer's recent failures to make trust fund payments were "separate and distinct" violations that could be litigated even though there had been similar failures to make payments in the past); *Truck & Dock Servs.*, 272 NLRB 592, 596 (1984) (charges alleging failure to make required monthly payments to the unions' benefit trust funds within 10(b) period were timely filed under "continuing violation" doctrine, despite earlier instances of such failure). Therefore, when Respondent issued its offer letters to Unit employees throughout 2014 and 2015, which the Union first learned it would be enforcing on September 21, 2015, it violated the Act.[24]

Similarly, should Respondent posit that by failing to file a grievance or Board charge over the 2012 letters, the Union consented to Respondent's use of these letters or waived its right to argue that the later letters violated the Act, such an argument

[24] Many of the relevant offer letters issued in 2014, but at least one – Finney's ATOC transfer offer letter (dated August 14, 2015) – issued in 2015, just months before the charge was filed on November 4, 2015. (GCX 1(a); JX 3, arb UX 5.) Thus, even assuming, *arguendo*, that the Union knew or should have known that these letters were coercing Unit employees in their exercise of Section 7 rights sooner than September 21, 2015 (despite Respondent's explicit earlier assurances that these were merely "form letters" it had yet to revise), there is nonetheless evidence in the record that Respondent continued issuing identical offer letters within the six months immediately preceding the filing of the charge, in violation of § 8(a)(1).

would be equally meritless. Waivers of statutory rights are not to be lightly inferred, but instead must be "clear and unmistakable." *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). In the instant case, there is no evidence that the Union consciously yielded or clearly and unmistakably waived its interest in the matter of the offer letters; rather, it relied upon the repeated assurances of Respondent's management that these "form letters" would not be enforced, and thus saw no need to file a grievance or Board charge – until they *were* enforced, starting in September 2015.

Finally, at the unfair labor practice hearing, Respondent's President Copeland suggested repeatedly that these were simply "form letters" it had adopted from its predecessor and then forgotten to revise after reaching the CBA with the Union in October 2012. In other words, he sought to paint Respondent's unfair labor practice as another innocent, years-long "mistake" that should be forgiven by the Administrative Law Judge. Such a defense holds no water, as Respondent is speaking out of both sides of its mouth.

On the one hand, Respondent asserts that the written terms set forth in these "form letters" served to clearly notify Unit employees that they would *not* be full-time (despite verbal assurances to the contrary by management), and that they would accrue vacation at the § 18.01 rate for "part-time seasonal" employees (despite the absence of the term "part-time seasonal" anywhere in the letters). On the other hand, Respondent also claims that the letters were just a formality required by the government and that Respondent had only mistakenly retained the blatantly unlawful language about at-will employment and Respondent's rights to unilaterally change terms and conditions of

employment after it reached a CBA with the Union. Respondent cannot have it both ways and, in any event, misunderstands the nature of the violation alleged.[25]

Again, whether an employer's conduct or statements have violated § 8(a)(1) turns solely on whether the reasonable employee would be coerced; it does not turn on the employer's motive or on whether the coercion succeeded or failed. *Multi-Ad Services*, 331 NLRB 1226, 1227-28 (2000), *enfd.* 255 F.3d 363 (7th Cir. 2001); *American Freightways Co., Inc.*, 124 NLRB at 147 (1959). Since Respondent explicitly relied on certain terms of these offer letters for the first time in September 2015, a reasonable employee who had come to rely over the past few years on Respondent's practice would question whether Respondent was sincere in communicating any of the other messages in the letters and whether it might intend to enforce them going forward. Thus, by issuing offer letters setting forth these coercive terms in 2014 and 2015, Respondent violated § 8(a)(1) of the Act.

2. Respondent Violated §§ 8(a)(1) and (5)

By relying on and citing to these 2014 and 2015 offer letters to justify its unilateral changes to Unit employees' terms and conditions of employment in about July and September 2015, Respondent also violated § 8(a)(5) of the Act. Although Respondent had sent similar offer letters to employees previously, it wasn't until late summer 2015 that it first began to suggest that the "Part Time/Full Time Status" language in the letters served to inform employees that they were being hired as "part-time" employees who

[25] Copeland's repeat testimony that government regulations require Respondent to issue offer letters to its new hires was puzzling. There is certainly no allegation in the Complaint that Respondent violated the Act by its mere practice of issuing offer letters to new Unit employees. Nor does Board law preclude an employer from issuing offer letters to Unit employees. Rather, it was the *substance* of the offer letters and the coercive statements therein, which directly contradicted the parties' collective bargaining relationship and the terms of the existing CBA, which violated the Act.

would only accrue vacation leave at the § 18.01 rate negotiated for "part-time seasonal" hires. The CBA does not provide for § 18.01 vacation accrual for any employees but "part-time seasonals," and the Union was never notified that Respondent had intended to hire these employees as "part-time seasonals" *or* as "part-time" employees, until long after their respective hire dates. The new application of the parties' CBA provisions in this regard constitutes a unilateral change in violation of §§ 8(a)(1) and (5) of the Act.

By offering Unit employees employment terms that were contrary to the CBA and its past practice, Respondent also engaged in direct dealing – another violation of §§ 8(a)(1) and (5). Direct dealing with represented employees occurs when: 1) the employer communicates directly with represented employees; 2) the communication concerns establishing or changing wages, hours, and/or other terms and conditions of employment, or undercutting the union's role in collective bargaining; and 3) such communication is made to the exclusion of the union. *El Paso Electric Co.,* 355 NLRB 544 (2010).

Here, Respondent offered Unit employees the following employment terms that were contrary to those set forth in the CBA and through its past practice: part-time employment, but with the hours guarantee reserved for full-time employees; vacation accrual at the rate set forth for "part-time seasonal" employees, despite working full-time hours, year-round; and at-will employment, without any promise of contractual protections. If these had merely been "form letters" that Respondent never sought to enforce, that would be one thing. However, when Respondent ultimately justified its sudden enforcement of these terms by pointing to the employees' signatures on the letters, which purportedly demonstrated their acceptance of these terms despite their

understanding to the contrary – and despite the Union's lack of involvement in these negotiations, as the affected Unit employees' collective bargaining representative – Respondent engaged in direct dealing in violation of §§ 8(a)(1) and (5) of the Act.

IV. CONCLUSION

In light of the above and the record as a whole, the General Counsel respectfully submits that Respondent violated §§ 8(a)(1), (3), and (5) of the Act by making changes in August and September 2015 to its established past practices surrounding its Unit employees' full-time employment status and vacation leave accrual at the § 18.02 rate set forth in the CBA, including during their first years of employment, and by sending job offer letters throughout 2014 and 2015 that coerced Unit employees in the exercise of Section 7 rights and constituted direct dealing.

Given these circumstances, Counsel for the General Counsel respectfully urges that an Order issue against Respondent requiring that it remedy these unfair labor practices and post and/or mail a Notice to Employees, as well as any other remedies deemed appropriate by the Administrative Law Judge.[26]

DATED at Seattle, Washington, this 8th day of June, 2018.

Respectfully submitted,

Elizabeth DeVleming
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National Labor Relations Board, Region 19
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Seattle, Washington 98174

[26] A proposed Notice and Order are attached.

APPENDIX

Proposed Order

C2G Ltd. Co. ("Respondent"), its officers, agents, successors, and assigns, shall

1. Cease and desist from:

   a. interfering with represented employees' exercise of Section 7 rights by issuing offer letters requiring them to acknowledge that their employment is "at-will," that they have "no contract or other guarantee of employment," and that their terms and conditions of employment will be "set solely by" Respondent, despite the fact that they are represented by the Union and their employment is subject to a collective bargaining agreement Respondent has negotiated with the Union;

   b. changing represented employees' employment status from full-time employment to part-time employment without first notifying and bargaining with the Union and/or because the Union files and processes a grievance or grievances on employees' behalf through the contractual grievance-arbitration procedure;

   c. changing represented employees' vacation accrual rate from the amount accrued under Section 18.02 of the parties' collective bargaining agreement with the Union to the amount accrued under Section 18.01 of that collective bargaining agreement without first notifying and bargaining with the Union;

   d. breaching its past practice of awarding represented employees vacation leave accrual at the Section 18.02 rate during their first year of employment, without first notifying and bargaining with the Union;

   e. dealing directly with represented employees over changes to their employment status and/or vacation accrual rates, to the exclusion of the Union;

   f. refusing to meet and discuss in good faith with the Union any proposed changes to represented employees' wages, hours, and working conditions before putting such changes into effect; and

   g. in any like or related manner interfering with employee rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

a. rescind and revise the employment offer letters Respondent has issued to its represented employees since 2014 in regards to the provisions referred to in paragraph 1(a), above;

b. reinstate the full-time employment status of employees Glenda Evans, Allen Matthews, Phillip Finney, and Richard Tuiletufuga;

c. restore all of its represented employees' accrued vacation leave, including any vacation leave employees accrued at the § 18.02 rate during their first years of employment, to what it was before Respondent changed it first in August 2015 and then again in September 2015, without first notifying and bargaining with the Union, including by crediting employees Glenda Matthews and Allen Matthews each with 80 hours of vacation leave;

d. if requested by the Union, rescind any and all changes to represented employees' terms and conditions of employment made without first notifying and bargaining with the Union;

e. remove from its files and destroy all employment offer letters Respondent has issued to its represented employees since 2014 containing the language referred to in paragraph 1(a) above, and inform all affected Unit employees that this has been done and that their signatures on such offer letters will not be used against them in any way;

f. within 14 days after service by Region 19, post copies of the Notice in this matter at all locations where Respondent's notices to employees are customarily posted; maintain such notices free from all obstructions or defacements; and grant to agents of the Board reasonable access to Respondent's facilities to monitor compliance with this posting requirement; and

g. within 21 days after service by the Region, file with the Regional Director of Region 19 of the Board a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply with the terms of this Order, including the exact locations where Respondent posted the required Notice.

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL recognize and bargain with General Teamsters Local 959, State of Alaska, affiliated with the International Brotherhood of Teamsters ("Union"), as the exclusive collective bargaining representative of our employees in the following unit regarding their terms and conditions of employment:

> All full-time and part-time employees, including Leads, employed by us under Contract HTC711-12-C-R001, and any other successor work performed at Eielson Air Force Base, Alaska, under the aforementioned contract.

WE WILL NOT interfere with your exercise of the above rights by requiring you to acknowledge that you work for us as an "at-will" employee who has "no contract or other guarantee of employment" or that your terms and conditions of employment will be "set solely by the Employer" despite that you are represented by a Union and your employment is subject to a collective bargaining agreement we have negotiated with your Union, and **WE WILL** remove and destroy any offer letter you signed since 2014 containing those terms and inform you that this has been done and that your signatures on such offer letters will not be used against you in any way.

WE WILL NOT change your employment status from full-time employment to part-time employment without first notifying and bargaining with your Union or because your Union files and processes a grievance or grievances on your behalf through the contractual grievance-arbitration procedure.

WE WILL NOT, without first bargaining with your Union, change your vacation accrual rate from the amount accrued under Section 18.02 of the collective bargaining agreement we have with your Union to the amount accrued under Section 18.01 of that collective bargaining agreement.

WE WILL NOT breach our past practice of awarding you vacation leave accrual at the Section 18.02 rate during your first year of employment without first notifying and bargaining with your Union.

WE WILL NOT deal directly with you over changes to your employment status and/or vacation accrual rate without the involvement of your Union.

WE WILL NOT refuse to meet and discuss in good faith with your Union any proposed changes to your wages, hours, and working conditions before putting such changes into effect.

WE WILL reinstate the full-time employment status of our employees Glenda Evans, Allen Matthews, Phillip Finney, and Richard Tuiletufuga.

WE WILL restore all of your accrued vacation leave, including any vacation leave you accrued at the Section 18.02 rate during your first year of employment, to what it was before we changed it during the pay period ending on August 6, 2015, and then changed it again on September 4, 2015, without first notifying and bargaining with your Union, including by crediting our employees Glenda Evans and Allen Matthews with 80 hours of vacation leave each.

WE WILL, if requested by your Union, rescind any and all changes to your terms and conditions of employment that we made without first notifying and bargaining with your Union.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

C2G Ltd. Co.
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

Dated: _____ **By:** _____
(Representative) (Title)

Certificate of Service

I hereby certify that a copy of Counsel for the General Counsel's Brief to the Administrative Law Judge was served on the 8th day of June, 2018, on the following parties:

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